

**LEASE
BETWEEN
THE UNITED STATES OF AMERICA
AND**

Ben Moreell Solar Farm, LLC

8th June/CW

THIS LEASE ("Lease"), executed this 1st day of June 2017 (the "Execution Date"), by and between THE UNITED STATES OF AMERICA, acting by and through the Secretary of the Navy ("Government"), and BEN MOREELL SOLAR FARM, LLC ("Lessee"). (Government and Lessee may sometimes jointly be referred to as the "Parties" and individually as a "Party").

WITNESSETH:

WHEREAS, the Leased Premises, as defined below, covered by this Lease is under the control of the Secretary of the Navy (the "Navy"); and

WHEREAS, the Leased Premises is not excess property as defined in section 3 of the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. § 102); and

WHEREAS, the Secretary of the Navy, pursuant to the provisions of 10 U.S.C. § 2667, has determined that the proposed use of the Leased Premises, subject to the terms and conditions of this Lease, will promote the national defense or serve the public interest.

NOW THEREFORE, in consideration of the terms, covenants, and conditions in this Lease, Government and Lessee agree as follows:

1. LEASED PREMISES.

1.1. Government leases, rents, and demises to Lessee, and Lessee hires and rents from Government, the Leased Premises for the Term (hereinafter defined), as more particularly described and/or depicted in Attachment A (the "Leased Premises"), together with all Government improvements and all related Government Personal Property as described and/or listed in Attachment A, and with all rights of access to the Leased Premises for ingress, egress, parking, and utilities as provided under Paragraphs 10 and 28 below.

1.2. As the Leased Premises are currently forested, the Lessee agrees, at its sole expense, to clear and grade land as required for the use set forth in subparagraph 4.1 below. Lessee understands that there are marketable forest products on the Leased Premises, having fair market value of (b) (4) [REDACTED]. The Lessee will pay the appraised amount to the Government within 30 days after Effective Date and this payment will be deposited in the DON Forestry Account. This payment for marketable forest products is not included in, or a part of Rent (neither cash nor in-kind), and must be provided to the Government as a separate cash/check payment. Payment for the timber is a condition precedent for Lessee's leasehold activities.

2. TERM. The term of this Lease shall begin on 1 July, 2018, or such earlier date when Lessee delivers a notice to the Government stating that Lessee wishes to make this Lease effective, and Government authorizes (the expiration of such

DEPARTMENT OF THE NAVY
GENERAL PURPOSE OUTLEASE

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All correspondence in connection with
this contract should include reference
to (Contract No.): N40085-17-RP-00077
Installation/UIC: NWS Earle/N40085

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period or date of such authorization, as applicable, being the "Effective Date"), and end on, 30 June, 2055, (thirty seven (37) years from Effective Date), unless sooner terminated under Paragraph 14 (the "Expiration Date").

3. CONSIDERATION.

3.1. **Rent.** Lessee shall pay rent in the amount per year set forth in Attachment D ("Rent") in the manner set forth in this Paragraph 3.

3.2. **Cash.** If Rent is payable in cash hereunder, Lessee shall pay rent in the amount as noted in Attachment D, payable in advance on the first day of each year at the rate specified in Attachment D, by valid check or money order and made payable to "Treasurer of the United States," citing the Contract Number N40085-17-RP-00077. For purposes of prompt payment, Lessee assumes the risk of using the U.S. Postal Service or other delivery service. The check must be delivered to the MidLant address found in Paragraph 18.

3.3. **In Kind.** In lieu of Lessee paying Cash Rent either totally or partially in cash pursuant to Paragraph 3.2, Lessee shall pay Government In-Kind consideration through the development, delivery and performance of the In-Kind Project as prescribed in this Paragraph 3.3 and Government will credit in-kind consideration towards Lessee's Rent obligation pursuant to the terms herein and in accordance with 10 U.S.C. §2667.

3.3.1. **Accrual Period Rent and Delivery of In-Kind Project.** Rent will accrue beginning on the Effective Date until and including the date that is the third anniversary of the Effective Date (the "Accrual Period"), but such Accrual Period Rent shall not be due and payable to the Government if Lessee provides monthly updates to the Government showing Lessee's progress towards successful completion of the Project as described in Attachment H (the "In-Kind Project"). Rent accrued but not paid during the Accrual Period will become immediately due and payable if the In-Kind Project is not completed by the end of the Accrual Period, for reasons including, but not limited to, compliance with applicable existing or reasonably anticipated regulations, statutes, or orders. At either (a) the conclusion of the Accrual Period, or (b) notice by Lessee of the full commercial operation of the In-Kind Project, the Government will review the In-Kind Project to confirm that it has been completed in accordance with Attachment H. Lessee shall at the earliest opportunity report to Government the commercial operation date of the In-Kind Project. The Government acknowledges that Rent for the Accrual Period of this Lease will have been received by in-kind consideration upon completion of construction and commencement of commercial operation of the In-Kind Project in accordance with the design criteria in Attachment H. If the Government finally determines pursuant to the process set forth in Attachment H that the In-Kind Project has not been completed in accordance therewith, then Rent shall be due and payable in cash pursuant to Paragraph 3.2 above.

3.3.1.1. During a regional outage event whereby power generated on the Leased Premises cannot be transmitted to the public utility power delivery system, Lessee's standard operating procedure is to isolate the solar energy system from the power delivery system; however, if Government has previously provided Lessee written notice of its technical ability to receive such power, then Lessee shall permit the solar energy system to continue to deliver power to (POI/Navy facility name here) instead of to the public utility power delivery system until regional service is restored.

3.3.2. **Performance Period Rent.** From the period of time following the Accrual Period until the Expiration Date (the "Performance Period") no Rent shall be due or owing to the Government as long as Lessee's In-Kind Project is meeting the performances standards set forth in Attachment H (as more fully described therein, the "Minimum Production Standard"). If Lessee fails to meet the Minimum Production Standard (reduced by any Deemed Production (as defined in Attachment H)) for a calendar production year during the Performance Period (with such measurement period commencing on the first year following delivery and acceptance of the In-Kind Project), Lessee shall pay a portion of the annual Rent, in cash, according to the formula set forth in such Attachment H. If Lessee's In-Kind Project fails to meet the Minimum Production Standard after the conclusion of a calendar year during the Performance Period (reduced by any Deemed Production, the Government may request that the Lessee provide a written plan that includes milestones to cure the cause of the failure. The Lessee shall thereafter implement the corrective action described in the plan in good faith.

3.3.3. Nothing in this Lease shall preclude Lessee from contracting with a third party for the work related to the In-Kind Project. Lessee shall require any contractor to procure a payment and performance bond in an amount not less than the estimated cost of the work related to the In-Kind Project contracted for. Prior to commencing the proposed construction work, Lessee shall obtain (or cause to be obtained by subcontractors) any environmental or construction permits required to commence construction. Lessee shall also be solely responsible for obtaining and maintaining in full force and effect any

permits required during the period of operation of the In-Kind Project. Copies of all required construction permits shall be delivered to the Government. Notwithstanding the foregoing, the Government shall disclose to Lessee and be responsible for maintaining any permits of general applicability to the Leased Premises that are held by or for the benefit of the Government, and shall be responsible for issuing any site-specific permits required by the Government in its capacity as the landlord with respect to the Leased Premises. Each of the Lessee and the Government shall comply with the terms of any permit applicable to their activities on or affecting the Leased Premises.

3.3.4. Prior to Government acceptance of the In-Kind Project, Government will retain the right of technical review of any proposed work to be performed. A Government representative may oversee the work solely for the benefit of Government and confirm satisfactory completion to the Commander/Commanding Officer. The Real Estate Contracting Officer ("RECO") must provide a written final acceptance of the work in accordance with Attachment H.

3.3.5. Upon termination of this Lease for any reason (other than termination due to the Government's breach or default of this Lease, in which case the foregoing limitation shall not apply), Lessee shall not be entitled to a refund of its costs paid for the In-Kind Project the performance of which has not been approved pursuant to Attachment H, and a final accounting will be performed and the balance of any Rent accrued up to that date and not previously accepted pursuant to procedures in Attachment H will be due within thirty (30) days of written demand by valid check or money order. Government reserves the right to have a final accounting performed promptly following termination of the Lease and request that the value of any Rent accrued up to that date and not already contractually obligated to any specific project or service to be performed be paid by valid check or money order to Government on demand. Nothing in this subparagraph 3.3.5 shall be deemed to limit Lessee's ability or rights to bring claim pursuant to existing Federal Law and Paragraph 24.

4. USE OF LEASED PREMISES.

4.1. The purpose for which the Leased Premises may be used, in the absence of prior written approval by Government, is for renewable energy generation, storage and distribution to the DON installation and the commercial power grid by development, construction and operation of the Project described in Attachment B (the "Project") and for no other purpose. Lessee understands and acknowledges that this Lease is not, and does not constitute, a commitment by Government with regard to any fee title conveyance of the Leased Premises, in whole or in part, to Lessee or any agency, instrumentality, or affiliate, or to any sublessee.

4.2. Lessee shall not undertake any activity that may affect a historic or archeological property, including excavation, construction, alteration, or repairs of the Leased Premises, without the prior approval of Government and compliance with section 106 of the National Historic Preservation Act 54 U.S.C. §306108, and the Archeological Resources Protection Act of 1979 (16 U.S.C. §470aa). Buried cultural materials may be present on the Leased Premises. If those materials are encountered, Lessee shall stop work immediately and notify Government. Government has no knowledge of any historical or archeological property on the Leased Premises; in the event that it becomes aware of any, Government will immediately notify Lessee.

5. TRANSFER, ASSIGNMENT AND SUBLEASING; MORTGAGEE PROTECTION.

5.1. Lessee shall neither transfer, assign, nor sublet this Lease or any interest in it, or any property on the Leased Premises, or grant any interest, privilege, or license whatsoever (other than the actions contemplated by subparagraph 5.4) in connection with this Lease without the prior written consent of Government. Consent shall not be unreasonably withheld or delayed. Government hereby agrees that such consent shall be granted so long as the transferee, assignee or subtenant, as applicable, has provided Government reasonably satisfactory evidence (a) of its ability to meet its obligations under the transfer, assignment or sublease, (b) of its affiliate, subcontractor, or agent's prior experience owning and operating energy generation assets and (c) that such transferee, Mortgagee, assignee or subtenant does not pose a threat to the national security of the United States, the determination of which shall be made in Government's sole discretion. Government shall use reasonable efforts to provide such consent within thirty (30) calendar days following written request thereof.

5.2. Any sublease granted by Lessee shall contain a copy of this Lease as an attachment and be consistent with the terms and conditions of this Lease and shall terminate immediately upon the expiration or any earlier termination of this Lease, without any liability on the part of Government to Lessee or any sublessee, except as specifically stated in this Lease. No sublease shall relieve Lessee of any of its obligations under this Lease. Under any sublease made with or without consent of Government, the sublessee shall be deemed to have assumed all of the obligations of Lessee under this Lease. Every sublease shall be subject to, and shall be deemed to contain, the Environmental Protection provisions set forth in Paragraph 13 below.

5.3. Lessee shall submit to Government for its prior written consent, a copy of each sublease Lessee proposes to execute. The consent may include a requirement that Lessee renegotiate the sublease to conform to the provisions of this Lease. Consent to the sublease shall not be taken or construed to diminish or enlarge any of the rights or obligations of either Government or Lessee. Should a conflict arise between the provisions of this Lease and a provision of the sublease, the provisions of this Lease shall take precedence. Upon its execution, a copy of each sublease shall be immediately furnished to the Government.

5.4. Subject to Government approval which shall not be unreasonably withheld or delayed assuming the proposed holder of a mortgage meets the criteria of subparagraph 5.1(c), during the term of this Lease, Lessee may encumber its interest in the Leased Premises ("Leasehold") as well as its interest in the improvements on the Leased Premises by one or more loans secured by a mortgage. The proposed holder of any such mortgage, shall be referred to herein as the "Mortgagee". Notwithstanding any foreclosure, Lessee shall remain liable for the performance of all the provisions of this Lease which by the terms hereof are to be carried out and performed by Lessee.

5.5. Lessee shall notify Government promptly of any lien or encumbrance, except those liens addressed in Paragraph 25, which has been created or attached to the Improvements or Lessee's interest in the Improvements, whether by act of Lessee or otherwise, of which Lessee has notice. The Mortgagee or purchaser at foreclosure of Lessee's interest in this Lease may appoint an agent, subcontractor or nominee to operate this Lease contingent upon written notice to the Government of the name of the entity; provided that the Government shall have the right to deny access to the Mortgagee or purchaser at foreclosure or any agent, subcontractor, or nominee thereof if the Government determines in its sole discretion that any such entity poses a threat to the national security of the United States. The Mortgagee has a right to submit and obtain pre-approval of the Mortgagee or purchaser at foreclosure or any agent, subcontractor or nominee from the Government. The Mortgagee or any purchaser at foreclosure shall become liable and fully bound by the provisions of this Lease for the period of time during which such Mortgagee or any purchaser at foreclosure performs, or causes the performance of, the obligations under this Lease.

5.6. In no event shall the right granted herein to Lessee to mortgage or otherwise encumber Lessee's Leasehold interest, created by and pursuant to this Lease, be deemed or interpreted as a subordination of Government's interest in the Leased Premises to the lien of such mortgage or encumbrance, it being expressly agreed that under no circumstances shall Lessee have the right to mortgage or encumber the interest of Government in the Leased Premises or subordinate such interests to the lien of any mortgage or encumbrance that Lessee may place upon the Leased Premises created by and pursuant to this Lease.

5.7. Government consents to Lessee's grant to the Mortgagee of a security interest in any fixtures, equipment, inventory and/or other personal property owned by Lessee and located on the Leased Premises. Government hereby waives any interest that Government may have in such personal property by virtue of this Lease.

5.8. The Mortgagee shall not be required to cure any matter that is not reasonably susceptible to cure by Mortgagee (to the extent it actually constitutes a default under this Lease) including a) any matter arising from a bankruptcy or other insolvency event or court proceeding by or against Lessee or b) any matter that cannot be cured by the payment of money or performance of the development activities undertaken pursuant to this Lease ("Personal Default"). The Mortgagee shall have the same rights to cure any breach or default of the terms, conditions, or obligations of this Lease as the Lessee has. Mortgagee shall have ninety (90) days (or such other period of time mutually agreed by the Mortgagee and the Government) following receipt of written notice from Government pursuant to subparagraph 15.3 to cure any breach or default by the Lessee. Government shall accept cure of any breach or default and performance by Mortgagee as if the Lessee had cured or performed the same.

5.9. The Mortgagee (or its designee, assignee or nominee) shall have the exclusive right to elect to enter into a replacement lease on the terms set forth herein, by providing written notice of such election to the Government within sixty (60) days after receipt of a Government termination notice with respect to this Lease (or notice of the rejection of the Lease in bankruptcy or other insolvency procedures). Within thirty (30) days following such request of the Mortgagee or its designee, assignee or nominee, or such longer period as reasonably necessary, Government and the Mortgagee (or its respective designee, assignee or nominee as lessee thereunder and subject to the requirements in Paragraph 5.1(b) and (c)) shall execute, acknowledge, and deliver a replacement lease, which replacement lease shall have the same priority as this Lease, shall be subject to any of the existing rights of Lessee under this Lease, shall automatically be effective as of the termination of this Lease, and shall

continue in effect for the remainder of the otherwise unexpired Term hereof upon all the covenants, conditions, limitations and agreements contained in this Lease. The Mortgagee or its designee, assignee or nominee: (i) shall, upon request of Government, reimburse or pay on behalf of Government, simultaneously with the delivery of such replacement lease, all expenses, including reasonable attorneys' fees and disbursements and court costs actually and reasonably incurred by Government in the negotiation and execution of the replacement lease; and (ii) shall promptly commence, and thereafter diligently pursue, efforts to cure any defaults that arise under the replacement lease other than those described in Paragraph 5.8 above. In the event that applicable laws do not permit the execution of a replacement lease, Government shall take appropriate action as shall be legally permissible under applicable laws to recognize the Mortgagee (or its designee, assignee or nominee) as substitute lessee under this Lease.

5.10. Estoppel Certificates. Provided the facts support such a statement, either Party shall within ten (10) days after receiving written request by the other, certify by written instrument as to the following:

(i) That the Lease is unmodified or a summary of modifications made and agreed to by both Parties and in full force and effect;

(ii) That no default has occurred under the Lease which has not been waived, and no event has occurred which, but for the passage of time and/or the giving of notice, would constitute a default under the Lease;

(iii) That to their best knowledge, there are no existing claimed set-offs or defenses against the enforcement of any of the agreements, terms, covenants or conditions of the Lease and any modifications of the Lease on the part of the other party to be performed or complied with; and

(iv) The date of expiration of the Term.

6. PHYSICAL CONDITION OF PROPERTY.

6.1. The Leased Premises shall be delivered to Lessee on an "As Is, Where Is" basis, and, as such, Government makes no warranty to its usability generally or its fitness for any particular purpose provided that, the Lessee may rely on the accuracy of the ECP and related environmental documents provided by the Government.

6.2. In the event this Lease is terminated at the expiration of the Term or pursuant to Paragraph 14, and the Parties have not agreed to enter into a new lease, or conveyance of title to the Leased Premises, Lessee shall return the Leased Premises to Government in the same condition in which it was received consistent with the "Joint Inventory Inspection Report" (Attachment K). Lessee may, at its expense and with prior written approval of the Government, at any time during the Term, (a) replace any personal property with personal property of like kind and utility, (b) replace any personal property in a good and workmanlike manner, and (c) dispose of any worn out, obsolete, or non-functioning personal property, in accordance with applicable laws and regulations. Government shall not unreasonably withhold, condition, or delay granting its approval to Lessee's request for those actions. Lessee shall not be made to replace merchantable forest products located on the Leased Premises for which value has been paid to the Government in accordance with subparagraph 1.2.

7. ENVIRONMENTAL CONDITION OF PROPERTY. An Environmental Condition of Property ("ECP") is attached to and made a part of this Lease as Attachment C. The ECP sets forth the existing environmental conditions of the Leased Premises as represented by a survey conducted by Government and sets forth the basis for the Government's determination that the Leased Premises are suitable for leasing. Lessee understands that whenever this Lease ends, Government may conduct an inspection of the Leased Premises to determine if any material deviation from the initial environmental condition has occurred, and if a material deviation has occurred, Lessee will remain liable as prescribed in Paragraphs 13, 15 and 16 (subject in each case to the limitations on Lessee's liability described in each of such Paragraphs), and other terms contained herein, notwithstanding the ending of this Lease. Lessee and each sublessee are made aware of the notifications contained in the ECP and shall comply with all restrictions in it.

8. IMPROVEMENTS AND RESTORATION.

8.1. Lessee, or any sublessee, shall not construct or make any substantial construction, alterations, additions, modifications, excavations, betterments, or improvements to, installations upon, or otherwise modify or alter the Leased Premises in any way (collectively, the "Improvements"), including those that may adversely affect human health or the environment, without the prior written notification by the Lessee and written consent of Government (except as noted in Paragraph 8.3.3 and Attachment I). Title to all Improvements constructed by or on behalf of the Lessee located in, on or under the Leased Premises shall vest in and belong to the Lessee subject to the terms of this Lease. Government shall consent to the commencement of "limited work" on the Leased Premises so long as Lessee has satisfied the milestones in section 8.3. Upon the completion of such milestones, Government shall issue a Limited Notice to Proceed (LNTP) for commencement of "limited work" as requested by the Lessee. Consent to commence any other construction on the Leased Premises will be

provided to the Lessee in a Notice to Proceed (NTP) and shall not be unreasonably withheld or delayed subject to the milestones in section 8.3. After receipt of a notice of request for either LNTP or NTP, Government shall provide such LNTP or NTP (or otherwise provide a reasonably detailed explanation of why such request is being rejected and any remaining requirements needed to achieve LNTP or NTP) within a timely manner following delivery of such written request from Lessee. For the avoidance of doubt, Government hereby agrees that it shall provide NTP with respect to the project described on Attachment B so long as Lessee has satisfied all the milestones in Section 8.3. If Government declines to provide such LNTP or NTP, Lessee shall promptly address all of Government's comments necessary to satisfy the foregoing milestones, and shall resubmit its request for LNTP or NTP, repeating the foregoing process until LNTP or NTP is provided. The Improvements shall be done in a workmanlike manner and be subject to the requirements of all state and local building codes, as applicable. Lessee shall give Government designs at design milestones of 50%, 90% and as-built level design drawings for proposed changes to Attachment B, including but not limited to those resulting from design finalization, project optimization, regulatory influence, and changing knowledge of site conditions. Interconnection Service Agreement provided by PJM will be obtained for the project described in Attachment B, as required, and the approving order shall be herein contained as Attachment F.

8.2 [Reserved]

8.3. Milestones for LNTP and NTP:

8.3.1. Government shall consent to the commencement of "limited work" on the Leased Premises (LNTP) for the following purposes once the milestones shown below in section 8.3.2 for LNTP are met:

- a) Surveying;
- b) Geotechnical exploration and testing post designs;
- c) Perform other exploratory work to accommodate design efforts;
- d) Timbering to clear the lease footprint (if applicable);
- e) Begin civil work and earthwork (including but not limited to site grading, vegetation removal, and perimeter fence construction (collectively, the "Early Site Work"));
- f) Establishment of material staging, temporary parking areas, and construction offices;
- g) Install Erosion Control Measures approved by local authority;
- h) Installation of electrical equipment and infrastructure (generators, switchgear, transformers, or any additional related work such as install underground conduits, concrete pads or connect to the point of interconnection);
- i) Wetland delineation
- j) Environmental investigation; and
- k) Other related work as required by the installation or requested by the Lessee.

8.3.2 LNTP MILESTONES - Lessee has provided and Government has approved the following:

- a) Prior written notification of request for LNTP activities;
- b) Updated Project Schedule (as applicable)
- c) Work plan, scope and design (if applicable) for the work (i.e. tree clearing, fence installation, geotechnical, staging, etc.) that the Lessee intends to perform onsite, as more particularly described in Attachment B (Each prepared in accordance with commercially reasonable standards);
- d) Emergency Contact List (primary point of contact for Lessee and subcontractors);
- e) Safety/Accident Prevention Plan (prepared in accordance with commercially reasonable standards);
- f) Environmental Protection Plan for the execution of related activities, if applicable as determined by the installation (prepared in accordance with commercially reasonable standards);
- g) Erosion Control Plan for the execution of related activities, if applicable as determined by the installation (prepared in accordance with commercially reasonable standards);
- h) Applicable dig permit.

8.3.3 The Government granted to the Lessee on July 7, 2016 an exclusive option (the "Option") to Lease the Property as more particularly described in Attachment A to this Lease, inclusive of a Right of Entry (ROE), as described in Exhibit "B" of the Option, which will terminate upon execution of Lease signature. The Option ROE is superseded by the Lease ROE provided as Attachment I, effective as of the execution of Lease signature. The ROE provides the Lessee and its authorized representatives, without the requirement to obtain additional Governmental approvals in the form of a Limited Notice to Proceed, the right to continue to conduct studies, due diligence, investigations of the Leased Premises including but not limited to the measurement of meteorological characteristics of the Leased Premises (which may require the installation of a meteorological station), conducting of geotechnical tests and borings, and performing Phase I and Phase II environmental site assessments of the soils, water, and improvements on the Leased Premises (work associated with the purposes shown in 8.3.1 (a), (b), and (c)). The ROE is subject to the terms of Paragraph 8.3.2 as applicable and does not preclude the Lessee's

requirement to obtain all necessary permits or authorizations required by Federal, state, and local laws, regulations, and legally binding standards that are or may become applicable to Lessee's activities on the Leased Premises.

8.3.4 Government shall consent to the commencement of remainder of the work (LNTP/NTP) on the Leased Premises for the remaining purposes shown in section 8.3.1 and below in this section once the milestones shown above and below in sections 8.3.2 and 8.3.5 for LNTP/NTP are met:

- a) Installation of solar posts, racking and panels; and
- b) Any additional related work not previously requested or accomplished.

8.3.5 NTP MILESTONES:

- a) Prior written notification of request for NTP;
- b) All milestones required in section 8.3.2, if not previously provided;
- c) Full plan and description of the proposed Improvements, including any other information on the proposed work reasonably requested by Government, specifically, Improvements known to the Government and proposed by the Lessee are described in Attachment B;
- d) Receipt and approval of the 90% design drawings;
- e) Written notice that Lessee is prepared to proceed for the construction of the Improvements under the applicable construction contract.

8.4 Restoration: Except as otherwise stated in this Lease, or in Government's written approval, upon expiration or earlier termination of this Lease, Lessee shall promptly remove the Improvements and restore the Leased Premises to substantially the same condition that existed when the term of this Lease began, or to a condition that is acceptable to Government.

9. **ACCESS BY GOVERNMENT.** In addition to access required under Paragraph 13, at all reasonable times during business hours throughout the Term of this Lease, Government shall be allowed access to the Leased Premises for any purpose upon reasonable prior written notice to Lessee or sublessee. Government normally will give Lessee or any sublessee 24-hour's prior notice of its intention to enter the Leased Premises, unless it reasonably determines the entry is an emergency required for safety, health, environmental, operations or security purposes, in which event no notice shall be required. Any claims by Lessee or sublessee against Government for damages arising from such entry shall be governed by the Federal Tort Claims Act and Brooks Act. Nothing in this Lease shall be deemed to prejudice the rights of Lessee or any sublessee under any contract, other agreement or law including, but not limited to the Federal Tort Claims Act. All necessary keys to the buildings and Leased Premises occupied by Lessee or any sublessee shall be made available to Government upon request. Notwithstanding the foregoing, Government agrees that it shall use reasonable efforts to avoid any interruption of Lessee's operation of the Leased Premises.

10. **UTILITIES AND SERVICES.** Lessee and any sublessee shall be responsible for obtaining utilities and services for the Leased Premises. In the event that Lessee shall request and Government shall furnish Lessee with any utilities and services maintained by Government, Lessee shall pay Government the agreed charges as additional rent under this Lease. Those charges and the method of payment shall be determined by Government or the appropriate supplier of the service, in accordance with applicable laws and regulations, on the basis that Government or the appropriate supplier may establish, and may include a requirement for the installation of adequate connecting and metering equipment at the sole cost and expense of Lessee. It is expressly agreed and understood that Government in no way warrants the continued maintenance or adequacy of any utilities or services furnished by it to the Leased Premises. Lessee shall have the right, subject to Paragraph 8, to install utilities, or make improvements to existing utilities on the Leased Premises, including but without limitation, the installation of emergency power generators, that may be necessary for the operation of Lessee's equipment.

11. **NON INTERFERENCE WITH GOVERNMENT OPERATIONS.** Lessee or any sublessee shall not conduct operations or activities, or make any alterations, that would interfere with or otherwise restrict Government operations, environmental clean-up, or restoration actions by Government, U. S. Environmental Protection Agency (EPA), state environmental regulators, or their contractors. The Parties acknowledge that routine activities conducted by Lessee or its affiliates, officers, agents or subcontractors in the ordinary course of the development, construction, operation or removal of the solar Project described in Attachment B is not contemplated by the Parties to constitute such interference. Cleanup, restoration, or testing activities for environmental purposes by those entities shall take priority over Lessee's or any sublessee's use of the Leased Premises in the event of any conflict. However, Government will use reasonable efforts to prevent interference with Lessee's or the sublessee's use of the Leased Premises.

12. PROTECTION AND MAINTENANCE OF LEASED PREMISES.

12.1. Protection and Maintenance. Lessee shall, at its own expense, protect, preserve, maintain, and repair the Leased Premises in at least as good condition as when Lessee received it, normal wear and tear, and damage by insurable events, and acts of God excepted. Lessee's responsibilities shall include, but not be limited to, removal of trash, litter, broken glass, and other hazards or obstructions from the Leased Premises that are generated by Lessee, its agents, contractors, or employees. Lessee shall ensure that the Leased Premises is maintained free of any noxious condition caused by Lessee or its affiliates, subcontractors, agents or assigns which violates any applicable law. Lessee is responsible for the maintenance and repair of all buildings or structures built or placed on the Leased Premises by Lessee. For the avoidance of doubt, these obligations shall not extend to the operation and maintenance of the landfill as more particularly described in Attachment K.

12.2. Exterior Utility Systems. Lessee is responsible for the construction, repair, and maintenance of all exterior utility distribution lines, connections, and equipment that solely support Lessee's facilities. This responsibility extends from the facilities leased to the point of connection with the utility system that serves users other than Lessee. These systems include but are not limited to heating plants, steam lines, traps, high voltage transformers, substations, power distribution lines (overhead and underground), poles, towers, gas mains, water and sewage mains, water tanks, fire protection systems, hydrants, lift stations, manholes, isolation valves, meters, storm water systems, catch basins, and similar items. Pre-existing utilities (if any), with respect to that portion of the Leased Premises where the In-Kind Project is located, within, on or under the land fill cap are not utility systems for which the Lessee is responsible. The Government shall work with Lessee in good faith to provide such easements as shall be reasonable necessary for Lessee to obtain all exterior utility services and for Lessee to facilitate the interconnection of all renewable energy facilities located on the Leased Premises.

12.3. Refuse Removal. Debris, trash, and other undesirable materials generated or brought onto site by Lessee shall be promptly removed from the Leased Premises, and the Leased Premises shall be kept reasonably clean and free of undesirable materials at all times. At completion of the Lease Term, Lessee shall remove all containers equipment not belonging to Government, and leave the Lease Premises in an acceptably clean condition. This Paragraph does not apply to any debris, trash or other undesirable materials that were present on the Leased Premises prior to the Lessee's first day of occupancy.

12.4. Security Protection. Lessee shall keep the Leased Premises secure and safe. Any crimes or other offenses, including traffic offenses and crimes and offenses involving damage to or theft of Government property, shall be reported to the appropriate state or local municipal authorities for investigation and disposition (in non-exclusive legislative jurisdiction areas) and to Government as property owner.

12.5. Trained and Qualified Persons Only. Lessee shall ensure that only trained, experienced, and qualified persons perform the maintenance and protections services specified in this Paragraph.

13. ENVIRONMENTAL PROTECTION PROVISIONS.

13.1. Compliance with Law. Lessee shall comply, at its sole cost and expense, with the Federal, state, and local laws, regulations, and legally binding standards that are or may become applicable to Lessee's activities on the Leased Premises.

13.2. Permits. Lessee shall be solely responsible for obtaining at its cost and expense any environmental permits required pursuant to Environmental Laws for its operations under this Lease, independent of any existing permits. Government agrees to reasonably cooperate with lessee in complying with or obtaining any such permits.

13.3. Lessee Environmental Indemnification. Lessee shall, to the extent permitted under applicable law, indemnify and hold harmless Government from, and defend Government against, any damages, costs, expenses, liabilities, fines, or penalties (including without limitation reasonable attorney's fees or costs associated with investigations of environmental conditions) resulting from, either, any releases, discharges, emissions, spills, storage, treatment, or disposal of any Hazardous Substances resulting from Lessee acts or omissions, or any other acts or omissions by Lessee, its officers, agents, employees, or contractors, or licensees, or the invitees of any of them, giving rise to any Government liability, civil or criminal, or other Government responsibility under Federal, state, or local Environmental Laws, which occurs after the commencement of this Lease agreement within Leased Premises. This Paragraph shall survive the termination of this Lease, and Lessee's obligations under this Paragraph shall apply whenever Government incurs costs or liabilities for Lessee's actions of the types described in this Paragraph 13.

13.4. Inspection. Government's rights under this Lease specifically include the right for Government officials to inspect upon reasonable notice the Leased Premises for compliance with Environmental Laws, whether or not Government is

responsible for enforcing them. Those inspections may be made without prejudice to the right of duly constituted enforcement officials to make them. Government normally will give Lessee twenty-four (24) hours prior notice of its intention to enter the Leased Premises unless it determines the entry is required for safety, environmental, operations, or security purposes. Any claims by Lessee or sublessee against Government for damages arising from such entry shall be governed by the Federal Tort Claims Act.

13.5. Asbestos. Except as provided in Paragraph 13.6, Government is not responsible for any abatement, removal, or containment of asbestos. If Lessee intends to make any Improvements that require the abatement, removal, or containment of asbestos, an appropriate asbestos management plan must be incorporated in the alterations plan to be submitted to the Commander/Commanding Officer under Paragraph 8. The asbestos management plan will identify the proposed disposal site for the asbestos.

13.6. Abatement of Asbestos. Government shall be responsible for the removal or containment of asbestos or asbestos-containing material (collectively, "ACM") existing in the Leased Premises on the term beginning date as identified in the ECP attached to this Lease when that ACM is damaged or deteriorated to the extent that, through normal use, it is a source of airborne fibers in quantities that pose a threat to human health ("damaged or deteriorated ACM"). Government agrees to abate all that existing damaged or deteriorated ACM as stated in this Paragraph 13.6. Government may choose the most economical means of abating damaged or deteriorated ACM, which may include removal or containment, or a combination of removal and containment. The foregoing Government obligation does not apply to ACM that is not damaged or deteriorated at the time Lessee takes possession of the Leased Premises and that may become damaged or deteriorated by Lessee's activities. ACM that during the period of this Lease becomes damaged or deteriorated through the passage of time, or as a consequence of Lessee's activities under this Lease, including but not limited to any emergency, shall be abated by Lessee at its sole cost and expense. Notwithstanding Paragraph 13.5, in an emergency, Lessee shall notify Government as soon as practicable of its emergency ACM responses. Lessee shall be responsible for monitoring the condition of existing ACM on the Leased Premises for deterioration or damage and accomplishing repairs pursuant to this Lease.

13.7. Environmental Liability of Lessee/Government. Notwithstanding any other provision of this Lease, Lessee does not assume any, and Government shall retain all, liability or responsibility for any environmental response, remediation, or cleanup required as a result of environmental impacts or damage arising from or occurring during Government's past use, storage or release of Hazardous Substances on any portion of the installation, including the Leased Premises. Government does not assume any, and Lessee shall retain all, liability or responsibility for any environmental response, remediation, or cleanup required as a result of environmental impacts or damage arising from Lessee's use, storage, or release of Hazardous Substances on any portion of the Leased Premises, which occur after commencement of the term of this Lease Agreement. Lessee has no obligation under this Lease agreement and shall not assume any obligations or liabilities, and Government shall retain all such obligations and liabilities related thereto, regarding the undertaking of defense of any claim or action (including without limitation those made by third-parties), whether in existence now or brought in the future, to the extent arising out of the Government's use, storage or release of any Hazardous Substances on, or from any part, of the installation, including the Leased Premises, which occurred prior to the first day of the Lessee's occupation or use of the Leased Premises. Government has no obligation under this Lease agreement and shall not assume any obligations or liabilities, and Lessee shall retain all such obligations and liabilities related thereto, regarding the undertaking of defense of any claim or action (including without limitation those made by third-parties), whether in existence now or brought in the future, to the extent arising out of the Lessee's use, storage or release of any Hazardous Substances on, or from any part, of the installation, including the Leased Premises, which occurred after the first day of the Lessee's occupation or use of the Leased Premises. Further, Lessee has no obligation under this Lease agreement and shall not assume any obligations or liabilities, and Government shall retain all such obligations and liabilities related thereto, regarding the undertaking of defense of any claim or action (including without limitation those made by third-parties), whether in existence now or brought in the future, or conducting environmental response, investigation, remediation, or cleanup actions, arising from the Government's use, storage or release of Hazardous Substances. Government has no obligation under this Lease agreement and shall not assume any obligations or liabilities, and Lessee shall retain all such obligations and liabilities related thereto, regarding the undertaking of defense of any claim or action (including without limitation those made by third-parties), whether in existence now or brought in the future, or conducting environmental response, investigation, remediation, or cleanup actions, arising from the Lessee's use, storage or release of Hazardous Substances. In addition, Lessee does not assume any, and Government shall retain all, liability or responsibility for any non-compliance with or violations of Environmental Laws occurring with respect to the Leased Premises or the Government installation, which arose prior to the term of this Lease Agreement or resulted from Government acts or omissions. By contrast, Government does not assume any, and Lessee shall retain all, liability or responsibility for any non-compliance with or violations of Environmental Laws occurring on the

Leased Premises, which were caused by Lessee and arose after the commencement of the term of this Lease Agreement, or resulted from Lessee's acts or omissions. Notwithstanding any other provision of this Lease Agreement, the environmental liability apportionment provisions of this Paragraph 13.7 shall be sole and exclusive terms in this Lease Agreement governing the environmental liability of Lessee and Government, and it shall survive the term of this Lease Agreement.

13.7.1. For the purposes of this Paragraph, "defense" or "environmental response, remediation, or cleanup" includes liability and responsibility for the costs of damage, penalties, legal, and investigative services relating to such use or release. "Occupation or use" shall mean any activity or presence (including preparation and construction) in or upon such portion of, or such building, facility, or other improvement on, the Leased Premises.

13.7.2. Except as otherwise expressly provided therein, this Paragraph 13.7 does not relieve Lessee of any other obligations or liability it might have or acquire with regard to third parties or regulatory authorities by operation of law as a result of, or exacerbated by, Lessee's activities during the term of this Lease Agreement.

13.7.3. This Paragraph 13.7 shall survive the expiration or termination of this Lease.

13.8. No Liability for Interference. Lessee expressly acknowledges that it fully understands that some or all of the response actions to be undertaken with regard to the Federal Facilities Agreement (FFA), if applicable, or the ERP, may impact Lessee's quiet use and enjoyment of the Leased Premises. The Government represents through the NEPA and ECP documentation that an FFA DOES exist for the Leased Premises, and applies to site 4 only. Government represents through NEPA and ECP documentation that the Leased Premises are within proximity to a known ERP site. Lessee agrees that notwithstanding any other provision of this Lease, Government assumes no liability to Lessee should implementation of the FFA, if applicable, or the ERP, or other Hazardous Waste cleanup requirements, whether imposed by law, regulatory agencies, or the Navy or the Department of Defense, interfere with Lessee's use of the Leased Premises. Lessee shall have no claim against The United States or any of its officers, agents, employees, or contractors on account of any interference, whether due to entry, performance of remedial or removal actions, or exercise of any right with regard to the FFA, if applicable, or the ERP, or under this Lease or otherwise.

13.9. Response or Remedial Actions. Lessee agrees to comply with the provisions of any health or safety plan in effect under the ERP or any Hazardous Substance remediation or response agreement with environmental regulatory authorities during the course of any of the above described response or remedial actions. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by Lessee. Any claims by Lessee or sublessee against Government for damages arising from such actions shall be governed by the Federal Tort Claims Act.

13.10. Storage of Hazardous Wastes. Lessee must comply with all applicable Environmental Laws relating to environmental safety and health, the handling and storage of Hazardous Substances, and the proper generation, handling, accumulation, treatment, storage, disposal, and transportation of Hazardous Wastes or Hazardous Substances. Lessee shall not treat, store, transport, or dispose of Hazardous Waste or Hazardous Substances unless Lessee is in possession of any required permit issued to it under the Resource Conservation and Recovery Act, as amended (RCRA). Lessee shall not treat, store, transport, or dispose of any Hazardous Waste or Hazardous Substances under, pursuant to, or in reliance upon any permit issued to Government. Lessee shall be liable for the cost of proper disposal of any Hazardous Waste or Hazardous Substances generated by its approved sublessees in the event of failure of the sublessees to dispose properly of those wastes.

13.11. Environmental Records. Lessee must maintain and make available to Government all records, inspection logs, and manifests that track the generation, handling, storage, treatment, and disposal of Hazardous Waste or Hazardous Substances relevant to the Leased Premises, as well as all other environmental records required to be maintained by Lessee in connection with its use and activities on the Leased Premises by applicable Environmental Laws. Government reserves the right to inspect the Leased Premises and Lessee's records for compliance with Federal, state, local laws, regulations, and other legally binding requirements relating to the generation, handling, storage, treatment, and disposal of Hazardous Waste, as well as to the discharge or release of Hazardous Substances. Violations will be reported by Government to appropriate regulatory agencies, as required by applicable Environmental Laws. Government will notify Lessee of such violation prior to reporting to appropriate regulatory agency. Lessee shall be liable for the payment of any fines and penalties that may accrue as a result of the actions of Lessee.

13.12. Spill Plans. If Hazardous Waste, fuel, chemicals, or other regulated Hazardous Substances will be present on the Leased Premises, Lessee shall prepare a completed and approved plan prior to commencement of operations on the Leased Premises for responding to Hazardous Waste or Hazardous Substances, fuel, and other chemical spills. The plan shall comply with all applicable requirements of Environmental Law and shall be updated from time to time as may be required to comply with changes in site conditions or applicable requirements, and where required, shall be approved by all agencies having regulatory jurisdiction over the plan. The plan shall be independent of Navy spill prevention and response plans. Lessee shall not rely on use of the installation's personnel or equipment in execution of its plan. Lessee shall file a copy of the approved plan and approved amendments thereto with the Commander/Commanding Officer within fifteen (15) days of approval. Notwithstanding the foregoing, should Government provide any personnel or equipment, whether for initial fire response or spill containment or otherwise on request of Lessee, or because Lessee was not, in the sole opinion of Government, conducting timely cleanup actions as required of Lessee under applicable Environmental Laws, Lessee agrees to reimburse Government for its costs in accordance with all applicable Environmental Laws.

13.13. RCRA Compliance. Lessee shall comply with the hazardous waste permit requirements under the RCRA or its state equivalent and any other Environmental Laws applicable to Hazardous Waste or Hazardous Substances that apply to Lessee's use or activities on the Leased Premises. Lessee must provide at its own expense hazardous waste storage facilities that comply with all Environmental Laws that it may need for storage. Government hazardous waste storage facilities will not be available to Lessee. Any violation of the requirements of this Paragraph shall be deemed a material breach of this Lease.

13.14. Accumulation Points. Government accumulation points for Hazardous Wastes and Hazardous Substances, along with any other non-hazardous wastes shall not be used by Lessee, and Lessee shall not permit its Hazardous Waste to be commingled with Hazardous Waste or Hazardous Substances or any discarded material generated by the Government.

13.15. Discharge of Fill. Lessee shall not discharge, or allow the discharge of, any dredged or fill material into any waters or wetlands on the Leased Premises except in compliance with the express written consent of the Commander/Commanding Officer.

13.16. Pesticides. Prior to the storage, mixing, or application of any pesticide, as that term is defined under the Federal Insecticide, Fungicide, and Rodenticide Act, Lessee shall prepare a plan for storage, mixing, and application of pesticides (Pesticide Management Plan). The Pesticide Management Plan shall be sufficient to meet all applicable Federal, state, and local pesticide requirements, including those imposed under Environmental Laws. Lessee shall store, mix, and apply all pesticides within the Leased Premises only in strict compliance with the Pesticide Management Plan. The pesticides will only be applied by a licensed applicator.

13.17. National Pollutant Discharge Elimination System (NPDES) Permit. Lessee shall comply with all requirements of the Federal Water Pollution Control Act, as amended, the NPDES, and any applicable State or local requirements. If Lessee discharges wastewater to a publicly owned treatment works, Lessee must submit an application for its discharge prior to the start of this Lease. Lessee shall be responsible for meeting all applicable wastewater discharge permit standards. Lessee shall not discharge wastewater under the authority of any NPDES permit, pretreatment permit, or any other permit issued to the installation. Lessee shall make no use of any septic tank installed on the installation without the prior written consent of Government.

13.18. Radioactive Materials. Lessee must notify Government of its intent to possess, store, or use any licensed or licensable source or byproduct materials, as those terms are defined under the Atomic Energy Act, as amended, and its implementing regulations; of Lessee's intent to possess, use, or store radium; and of Lessee's intent to possess or use any equipment producing ionizing radiation and subject to specific licensing requirements or other individual regulations, at least sixty (60) days prior to the entry of such materials or equipment upon the installation. Upon notification, Government may impose requirements, including prohibition of possession, use, or storage, that are deemed necessary to adequately protect health and the human environment. Thereafter, Lessee must notify Government of the presence of all licensed or licensable source or byproduct materials, of the presence of all radium, and of the presence of all equipment producing ionizing radiation and subject to specific licensing requirements or other individual regulation; provided, however, that Lessee need not make either of the above notifications to Government with regard to source and byproduct material that is exempt from regulation under the Atomic Energy Act. Lessee shall not, under any circumstances, use, own, possess, or allow the presence of special nuclear material on the Leased Premises.

13.19. Improvements and Environmental Cleanup. Lessee further agrees that it shall give Government prior written notice accompanied by a detailed written description of all proposals for any Improvements that may impede or impair any activities under the ERP, or the FFA if applicable, or that will be undertaken in certain areas of the Leased Premises identified as "Areas of Special Notice" on Attachment E. An FFA DOES exist for the Leased Premises, and applies to site 4 only. These Areas of Special Notice consist of either "Operable Units" (as defined in the National Contingency Plan) or other areas of concern because of the potential for environmental contamination and include buffer areas as shown on Attachment E. The notice and accompanying written description of those proposals shall be delivered to Government sixty (60) days in advance of the commencement of any Improvements. In addition, Improvements shall not commence until Lessee has complied with the provisions of Paragraph 8. The detailed written description must include the effect that planned Improvements may have on site soil and groundwater conditions and the cleanup efforts contemplated under the ERP and the FFA, if applicable. Notwithstanding the preceding three sentences, Lessee shall be under no obligation to give advance written notice of any Improvements that will be undertaken totally within any structure located on the Leased Premises, provided that the work will not impede or impair any activities under the ERP or the FFA, if applicable. However, any work below the floor of any structure within any Area of Special Notice that will involve excavating in and/or disturbing concrete flooring, soil and/or groundwater, or will impede or impair any activities under the ERP or the FFA, if applicable, will be subject to the sixty (60) day notice requirement imposed by this Paragraph 13.19.

13.20. Environmental Access. Government, EPA, and the state and their respective officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to Lessee to enter upon the Leased Premises for the purposes enumerated in this subparagraph, and for other purposes consistent with any provision of the FFA, if applicable:

13.20.1. To conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test pitting, testing soil borings, and other activities related to the ERP or the FFA, if applicable;

13.20.2. To inspect field activities of Government and its contractors and subcontractors in implementing the ERP or the FFA, if applicable. When the Lessee has notice of an EPA or State Regulatory visit or inspection, the Lessee shall notify the Government as soon as practical;

13.20.3. To conduct any test or survey required by the EPA or the state relating to the implementation of the FFA, if applicable, or environmental conditions at the Leased Premises or to verify any data submitted to the EPA or state by Government relating to those conditions;

13.20.4. To conduct, operate, maintain, or undertake any other response or remedial action as required or necessary under the ERP or the FFA, if applicable, including, but not limited to, monitoring wells, pumping wells, and treatment facilities.

13.20.5. To monitor any environmental restrictive use covenants and the effectiveness of any other land use or institutional control established by the Navy on the Leased Premises, either by itself, by its contractor, by any public entity, including the state, or by a private entity registered in the state to monitor environmental covenants.

13.21. Environmental Protective Measures. Lessee shall comply with the Environmental Protective Measures provided in Attachment G.

13.22. Definitions. For the purposes of the "Environmental Protection Provisions" in this Paragraph 13 of the Lease agreement, the following terms shall have the meaning provided as follows:

13.22.1. The term "Environmental Laws" shall mean any and all federal, state, or local laws (including without limitation any and all legally binding requirements or obligations imposed by any governmental entity, body, or subdivision thereof, including administrative, legislative, or judicial entities, with jurisdiction over the Leased Premises) relating to, either, the protection of the environment or natural resources, including without limitation soils, groundwater or surface water resources, subsurface strata, flora and fauna, or ambient air; the release, investigation, remediation, management, storage, or registration of Hazardous Substances; or work-place or occupational health or safety, industrial hygiene, or employee hazard prevention.

13.22.2. The term "Hazardous Substances" shall mean any and all solid or liquid materials, wastes or other discarded material, or substances of any kind whatsoever subject to regulation or designated as either "toxic," "hazardous," "dangerous," "harmful," "pollutants," or "contaminants," pursuant to Environmental Laws, including without limitation the definition of Hazardous Substances contained in the Comprehensive Environmental Response, Compensation and Liability

Act (CERCLA) 42 U.S.C. § 9601 et seq, and the National Contingency Plan, 40 C.F.R. Part 300, as well as petroleum or any fraction thereof, asbestos or any asbestos containing material, or any material constituting a "toxic or hazardous material" as defined in 48 C.F.R. § 252.223-7006.

13.22.3 The term "Hazardous Waste" shall have the meaning ascribed to the term "Hazardous Waste" in 42 U.S.C. § 6903, the Resource Conservation and Recovery Act and in 40 C.F.R. Part 260.

14. TERMINATION.

(b) (4)



15. INDEMNIFICATION.

15.1 Indemnification by Lessee. Except as otherwise provided in Paragraph 13 of this Lease, Lessee shall indemnify and save Government harmless from, and shall defend Government against, and shall pay, all costs (including the costs of experts and investigators), expenses, and reasonable attorney's fees for all trial and appellate levels and post-judgment proceedings in connection with any fines, suits, actions, damages, liability, and causes of action of every nature arising or growing out of, or in any manner connected with, the occupation or use of the Leased Premises by Lessee, its employees, servants, agents, guests, invitees, and contractors. This includes, but is not limited to, any fines, claims, demands, and causes of action of every nature that may be made upon, sustained, or incurred by Government by reason of any breach, violation, omission, or non-performance of any term, covenant, or condition of this Lease on the part of Lessee, its employees, servants, agents,

guests, invitees, or contractors. However, this indemnity shall not extend to damages due to the sole fault of Government or its employees, agents, servants, guests, invitees or contractors. This covenant shall survive the termination of this Lease.

15.2. Release of Government. Lessee releases the Government and its employees from liability from death or injury to persons caused by water, ice, snow, sleet, frost, steam, hail, wind, cold, dampness, electricity, rust, falling plaster or other materials, fire, explosion, sewer or sewage, gas, vapors, odors, aircraft noise, toxic or hazardous wastes, substances, or materials, the bursting or leaking of pipes or plumbing, or faulty wiring, or by any equipment or fixtures, or any act of God, or objects of any nature moved or propelled by water, ice, snow, sleet, steam, hail, or wind, at the Leased Premises, unless caused by the willful act or gross negligence of the Government.

16. INSURANCE.

16.1. Risk of Loss or Damage; Required Insurance. Except as otherwise provided in this Lease, Lessee shall, without prejudice to any other rights of Government, bear all risk of loss or damage or destruction to the Leased Premises, including any buildings, improvements, fixtures, or other property on it, arising from any causes whatsoever, with or without fault by Government. During the entire period this Lease shall be in effect, Lessee, at no expense to Government, agrees to carry and maintain, or cause to be carried and maintained, in effect at all times during the Term of this Lease the following insurance coverages:

16.1.1. Property insurance coverage against loss or damage by perils covered by Insurance Services Office ("ISO") special cause of loss form or its equivalent in an amount not less than 100% of the full replacement cost of the Government owned buildings, building improvements, improvements to the land, fixtures, and personal property on the Leased Premises. The policies of insurance carried in accordance with this condition shall contain a "Replacement Cost Endorsement." The full replacement cost shall be determined every five years, except in the event of substantial changes or alterations to the Leased Premises undertaken by Lessee as permitted under the provisions of this Lease.

16.1.2. If the Leased Premises are located in a state, or an area of a state, which is prone to suffer property loss and damage from earthquake, flood, windstorm, or rainstorm, and if required by Government, a special risks or perils endorsement from a commercial insurer or from a state or Federal program, in amounts and with limitations and deductibles satisfactory to Government.

16.1.3. Commercial general liability insurance using the most recent occurrence form or its equivalent, covering bodily injury, premises, operations, products, completed operations, and independent contractors and for the contractual liability assumed by Lessee under Paragraph 15, and shall afford immediate protection at the time that the Term of this Lease begins, and at all times during the Term of this Lease, with single limit bodily injury coverage of \$5,000,000.00 each occurrence, with single-limit property damage in the amount of \$5,000,000.00 each occurrence, and with single-limit fire/legal liability coverage in the amount of \$5,000,000.00 each occurrence. The value of any structure(s) for fire coverage will be re-evaluated by Lessee every five (5) years, and approved by Government if change is requested.

16.1.4. If Lessee owns or leases business vehicles that will be operating on, to, or from the Leased Premises or military land, those vehicles must be registered and insured in accordance with installation requirements

16.1.5. If and to the extent required by law, workers' compensation and employer's liability or similar insurance in form and amounts required by law.

16.2. Insurance to be Carried by Lessee and/or Contractors. During the entire period this Lease shall be in effect, Lessee shall either, carry and maintain the insurance required below at its expense, or require any contractor performing work on the Leased Premises to carry and maintain the following at no expense to Government:

16.2.1. The property insurance coverage required under subparagraph 16.1 above, which shall include the general property form that provides coverage in connection with any construction or work permitted under this Lease.

16.2.2. Fire and any other applicable insurance provided for in this Paragraph 16, which, if not then covered under the provisions of existing policies, shall be covered by special endorsement related to any Improvements (as defined in Paragraph 8), including all materials and equipment incorporated in, on, or about the Leased Premises (including excavations, foundations, and footings) under an ISO special cause-of-loss, completed value, builder's risk form or its equivalent; and

16.2.3. Workers' compensation for Lessee and any contractor of Lessee.

16.3. Policies; Self-Insurance; Additional Insured; Cancellation of Coverage. All policies of insurance that this Lease requires Lessee or any contractor to purchase and maintain, or cause to be purchased and maintained under this Paragraph, shall be underwritten by insurers authorized to underwrite insurance in the state where the Leased Premises are located, and that have a rating of at least B+ by the most recent edition of *Best's Key Rating Guide*. In all policies, Government shall be named as additional insured for its interest in the Leased Premises and any personal property included with the Leased Premises (under ISO forms CG 2011 and CG 2028 or their equivalents), except for the workers' compensation insurance contemplated in Paragraph 16.2.3 above. Government shall appear in all policies as "The United States of America, c/o Commanding Officer, NAVFAC Southeast, Box 30, Jacksonville, FL 32212, and payments for losses shall be made to "Treasurer of the United States." All commercial insurance policies shall (a) state that no cancellation, reduction in amount, or material change in coverage shall be effective until at least ten (10) days after receipt by Government of written notice; (b) state that the insurer shall have no right of subrogation against Government; and (c) be reasonably satisfactory to Government in all other respects, including, without limitation, the amounts of coverages and deductibles from time to time. In the case of self-insurance for requirements of this Lease, Lessee shall provide at least sixty (60) days written notice to the Government prior to any reduction in coverage, cancellation of self-insurance, or change to the percentage of self-insurance to commercial insurance to be applied to requirements of this Lease. In no circumstances will Lessee be entitled to assign to any third party rights of action that Lessee may have against Government. Notwithstanding the foregoing, any cancellation of insurance coverage based on nonpayment of the premium shall be effective only upon ten (10) days' written notice to Government. Lessee understands and agrees that cancellation of any insurance coverage required to be carried and maintained by it or contractor under this Paragraph 16 will constitute a failure to comply with the terms of this Lease, and Government shall have the right to terminate this Lease upon receipt of any cancellation notice, but only if Lessee fails to cure noncompliance to the extent allowed under Paragraph 14.

16.4. Certificate of Insurance. Lessee shall deliver, or cause to be delivered to Government upon execution of this Lease and PRIOR TO ENTRY on or occupancy of the Leased Premises or the commencement of any Improvements (and thereafter, no less than thirty (30) days prior to the expiration date of each policy furnished under this Paragraph 16), a certificate or certificates of insurance (or in the event Lessee self-insures, a self-insurance letter in lieu thereof) evidencing the coverages and deductibles required by this Paragraph 16.

16.5. Notice of Casualty. In the event that any item or part of the Leased Premises shall be damaged or destroyed, the risk of which is assumed by Lessee under subparagraph 16.1, Lessee shall promptly give notice to Government. Lessee shall, as soon as practicable after the casualty, restore damaged or destroyed property as nearly as possible to the condition that existed immediately prior to the loss or damage, subject to Paragraphs 8, 23 and 5. All repair and restoration work under this Paragraph shall comply with the provisions of this Lease, including any notice and approval requirements.

16.6. Self-Insurance Requirements. Notwithstanding any other provision of this Lease, Lessee may, with the prior consent of the RECO, self-insure any risk for which insurance coverage is required under this Lease; provided, however, that if Lessee's statutory limits of liability or other impediments to the assumption of liability are less than the limits of insurance required in this Lease, Lessee shall obtain commercial coverage that is sufficient in amount and nature to satisfy the insurance requirements of this Lease when added to any self-insurance. In order to obtain the consent of Government to self-insure, prior to entry Lessee shall deliver to Government a writing setting forth the limitations and impediments, if any, to which Lessee's self-insurance is subject, Lessee's source of funds to pay any claim from any risk for which insurance is required under this Lease (including its most recent audited financial statement), and any other information that Government may require to assess Lessee's request. If commercial insurance is required for any purpose, the provisions of subparagraph 16.1.3 shall apply; however, the total amount of commercial insurance and self-insurance shall meet the dollar limitations contained in this Paragraph 16.

17. LABOR PROVISIONS.

17.1. Equal Opportunity. During the Term of this Lease, Lessee and each sublessee agree as follows with regard to all employees located at, or involved with, the Leased Premises:

17.1.1. Lessee and each sublessee shall not discriminate against any employee or applicant for employment because of race, color, age, marital status, handicap, religion, sex, or national origin. Lessee and each sublessee shall take affirmative action

to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, age, marital status, handicap, religion, sex, or national origin. That action shall include, but not be limited to, employment, upgrading, demotion, or transfer, retention or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, selection for training, including apprenticeship. Lessee and each sublessee agree to post in conspicuous places available to employees and applicants for employment notices furnished by Government containing the provisions of this nondiscrimination clause.

17.1.2. Lessee and each sublessee shall, in all solicitations or advertisements for employees placed at the Leased Premises by or on behalf of Lessee and each sublessee, state that all qualified applicants will receive consideration for employment without regard to age, marital status, handicap, race, color, religion, sex, or national origin.

17.1.3. Lessee and each sublessee shall send to each labor union or representative of workers for the Leased Premises with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by Government, advising the labor union or worker's representative of commitments under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

17.1.4. Lessee and each sublessee shall comply with all provisions of Exec. Order No. 11,246 of September 24, 1965, as amended by Exec. Order No. 11,375 of October 13, 1967 (the "Executive Order"), and of the rules, regulations, and relevant orders of the Secretary of Labor as it relates to the Leased Premises.

17.1.5. Lessee and each sublessee shall furnish all information and reports required by the Executive Order, and by the rules, regulations, and orders of the Secretary of Labor or pursuant to it, and will permit access to its books, records, and accounts by Government and the Secretary of Labor for purposes of ascertaining compliance with those rules, regulations, and orders.

17.1.6. In the event of Lessee's or any sublessee's noncompliance with this Equal Opportunity clause or with any of the applicable rules, regulations, or orders, this Lease or any sublease may be canceled, terminated, or suspended in whole or in part and Lessee or any sublessee may be declared ineligible for further Government contracts in accordance with procedures authorized in the Executive Order, and other sanctions may be imposed and remedies invoked, all as contained in the Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

17.1.7. Lessee shall include the provisions in Paragraph 17.1 in every sublease unless exempted by rules, regulations, or orders of the Secretary of Labor issued under section 204 of the Executive Order, so that those provisions will be binding upon each sublessee. Lessee will take whatever action against any sublessee that Government may direct as a means of enforcing those provisions, including sanctions for noncompliance. However, in the event Lessee becomes involved in, or is threatened with, litigation with a sublessee as a result of the direction by Government, Lessee may request Government to join the litigation to protect the interests of Government.

17.2. Contract Working Hours and Safety Standards Act (40 U.S.C. §§ 327-330) (the "Act"). This Lease and each sublease, to the extent that it is a contract of a character specified in the Act and is not covered by the Walsh-Healy Public Contracts Act (41 U.S.C. §§ 35-45), is subject to the following provisions and exceptions of the Act and to all other sections and exceptions of that law as they apply to employment at the Leased Premises:

17.2.1. Lessee and each sublessee shall not require or permit any laborer or mechanic in any workweek in which he/she is employed on any work on the Leased Premises to work in excess of forty (40) hours on work subject to the contents provisions of the Act unless the laborer or mechanic receives compensation at a rate not less than one and one-half times his/her basic rate of pay for those excess hours. The "basic rate of pay," as used in this clause, shall be the amount paid per hour, exclusive of the employer's contribution or cost for fringe benefits and any cash payment made in lieu of affording fringe benefits, or the basic hourly rate contained in the wage determination, whichever is greater.

17.2.2. In the event of any violation of the preceding subparagraph, Lessee or sublessee shall be liable to any affected employee for any amounts due, and to Government for liquidated damages. The liquidated damages shall be computed for each individual laborer or mechanic employed in violation of subparagraph 17.2.1 above, in the sum of \$200 for each calendar day on which the employee was required or permitted to be employed in excess of the standard workweek of forty (40) hours without payment of the required overtime wages.

17.3. Convict Labor. In connection with the performance of work required by this Lease or any sublease, Lessee or any sublessee agrees not to employ any person undergoing a sentence of imprisonment at hard labor.

17.4. Acquisition Regulation. Unless specifically required by other terms contained in this Lease, neither the Federal Acquisition Regulation (FAR), nor the Defense Federal Acquisition Regulation Supplement (DFARS) apply to this outgrant lease, which is executed under the authority of 10 U.S.C. 2667.

17.5. Davis-Bacon Act. The Davis-Bacon Act as amended (40 U.S.C. § 3141-3148, and the implementing regulations at 29 C.F.R. pt. 5) apply to performance of the In-Kind Project described in Attachment H of this Lease.

18. NOTICES. Notices shall be sufficient under this Lease if made in writing and submitted in the case of Lessee to:

The Conti Group
Attn: Legal Department
2045 Lincoln Highway
Edison, NJ 08817

And for the Government:

(b) (6)



and

Those persons shall serve as the representatives of the Parties and the points of contact during the Term of this Lease. Such persons may be changed at any time during the Term of this Lease by notice of such change to the other party. Any notice shall be deemed to have been given, unless delivered personally, when deposited in the U.S. mail, postage pre-paid, certified mail, return receipt requested and addressed as set forth above or to another address that Lessee or Government shall have stated to the other by like notice, or upon confirmation of receipt if sent by tele facsimile on a regular business day and addressed as set forth above, or within twenty-four (24) hours, or the next business day if sent by a recognized overnight delivery service.

19. AUDIT. This Lease and any sublease shall be subject to audit by any authorized Government agency. Lessee and each sublessee shall make available to those agencies for use in those audits all records that it maintains that are related this Lease or any sublease and copies of all reports required to be filed under this Lease.

20. INTEREST. Notwithstanding any other provision of this Lease, unless paid within thirty (30) calendar days, all amounts that become payable by Lessee to Government under this Lease (net of any applicable tax credit under the Internal Revenue Code) shall bear interest from the date due. The rate of interest will be the Current Value of Funds Rate published by the Secretary of the Treasury under the Debt Collection Act of 1982 (31 U.S.C. § 3717). Amounts shall be due upon the earliest of (a) the date fixed by this Lease, (b) the date of the first written demand for payment, consistent with this Lease, including demand consequent upon default termination, (c) the date of transmittal by Government to Lessee of a proposed supplemental agreement to confirm completed negotiations fixing the amount, or (d) if this Lease allows for revision of prices, the date of written notice to Lessee stating the amount of refund payable in connection with a pricing proposal or in connection with a negotiated pricing agreement not confirmed by lease supplement.

21. AGREEMENT. This Lease shall not be modified except in a single writing that is signed by both Lessee and Government. No oral statements or representation made by, or for, on behalf of either Lessee or Government shall be a part of this Lease. Should conflict arise between the provisions of this Lease and any attachment to it, or any other agreement between Government and Lessee, the provisions of this Lease shall take precedence.

22. FAILURE TO INSIST ON COMPLIANCE. The failure of Government to insist in any one or more instances upon performance of any of the terms, covenants, or conditions of this Lease shall not be construed as a waiver or relinquishment of Government's right to the future performance of any of those terms, covenants, or conditions and Lessee's obligations for their future performance shall continue in full force and effect.

23. DISPUTES.

23.1. This Lease is subject to the provisions of the Contract Disputes Act of 1978, as amended, (41 U.S.C. §§ 7101-7112) (the "Disputes Act").

23.2. Except as provided in the Disputes Act, all disputes arising under or relating to this Lease shall be resolved under this clause and the provisions of the Disputes Act.

23.3. "Claim," as used in this clause, means a written demand or written assertion by Lessee or Government seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of Lease terms, or other relief arising under or relating to this Lease. A claim arising under this Lease, unlike a claim relating to this Lease, is a claim that can be resolved under a Lease clause that includes the relief sought by the claimant. However, a written demand or written assertion by Lessee seeking the payment of money exceeding \$100,000 is not a claim under the Disputes Act until certified as required by Paragraph 23.4.2. A voucher, invoice, or other routine request for payment that is not in dispute is not a claim under the Disputes Act. The request may be converted to a claim under the Disputes Act by complying with the submission and certification requirements of this clause, if it is disputed either for liability or amount or is not acted upon in a reasonable time.

23.4.1. A claim by Lessee shall be made in writing and submitted within six (6) years after accrual of the claim to Government, for a written decision. A claim by Government against Lessee shall be subject to a written decision by Government.

23.4.2. Lessee shall deliver the certification stated in subparagraph 23.4.2.2.2 when submitting any claim:

23.4.2.1. Exceeding \$100,000; or

23.4.2.2. Regardless of the amount claimed, when using:

23.4.2.2.1. Arbitration conducted pursuant to 5 U.S.C. §§ 575-580; or

23.4.2.2.2. Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).

"Lessee certifies that the claim is made in good faith; that the supporting data is accurate and complete to the best of Lessee's knowledge and belief; that the amount requested accurately reflects the Lease adjustment for which Lessee believes the Government is liable; and that the person executing this certificate on behalf of Lessee is duly authorized to certify the claim on behalf of Lessee."

23.4.3. The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim

23.4.4. The certification may be executed by any person duly authorized to bind Lessee for the claim.

23.5. For Lessee claims of \$100,000 or less, the Government must, if requested in writing by Lessee, render a decision within sixty (60) days of the request. For Lessee-certified claims over \$100,000, the Government must, within sixty (60) days decide the claim or notify Lessee of the date by which the decision will be made.

23.5.1. The decision of the Government shall be final unless Lessee appeals or files a suit as outlined in the Disputes Act.

23.6. At the time a claim by Lessee is submitted to the Government, or a claim by Government is presented to Lessee, the Parties may agree to use alternative means of dispute resolution. When using arbitration conducted under 5 U.S.C. §§ 575-580 or when using any other ADR techniques that the agency elects to handle in accordance with ADRA, any claim, regardless of amount, shall be accompanied by the certification described in Paragraph 23.4.2.2.2. and executed in accordance with Paragraph 23.4.4.

23.7. Government shall pay interest on the amount found due and unpaid by it from (1) the date the Government received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in the Federal Acquisition Regulation (48 C.F.R. § 33.201), interest shall be paid from the date that the Government initially receives the claim. Simple interest on claims shall

be paid at the rate fixed by the Secretary of the Treasury, as stated in the Disputes Act, which is applicable to the period during which the Government receives the claim and then at the rate applicable for each six (6) month period as fixed by the Secretary of the Treasury during the pendency of the claim.

23.8. Notwithstanding anything in this Paragraph, Lessee shall proceed diligently with the performance of this Lease pending final resolution of any request for relief, claim, appeal, or action arising under this Lease, and comply with any decision of the Government.

24. COVENANT AGAINST CONTINGENT FEES. Lessee warrants that no person or agency has been employed or retained to solicit or obtain this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by Lessee for the purpose of obtaining business. For breach or violation of this warranty, Government shall have the right to annul this Lease without liability or in its discretion to require Lessee pay, in addition to the rent or consideration, the full amount of the commission, percentage, brokerage, or contingent fee.

25. LIENS. Lessee and each sublessee shall promptly discharge, or cause to be discharged, a valid lien, right *in rem*, claim, or demand of any kind, except one in favor of Government that at any time may arise or exist regarding the Leased Premises or materials or equipment furnished to it, or work done on it, or to any part of it, by Lessee's or any sublessee's use of the Leased Premises (other than inchoate mechanics' and materialmen's liens for construction in progress, workmen's, and repairmen's liens arising in the ordinary course of business on or encumbering Lessee's interest in the Leased Premises that in each case are either for amounts not due or for amounts that are being contested in good faith through appropriate proceedings (such liens, "Permitted Lien")); provided, however, that Lessee and each sublessee shall have the right to enter into a Leasehold mortgage and shall have the right to enter into leases for equipment or other secured financing arrangements in connection with equipment installed at the Leased Premises. In the event the Lessee suffers any levy or attachment on the Lessee's interest in the Leased Premises and any improvements thereon other than any Permitted Lien, the Lessee shall, within thirty (30) days after receiving notice of any liens for material or work claimed to have been furnished to the Leased Premises on the Lessee's behalf and at the Lessee's request: (a) discharge the lien; or (b) post a bond equal to the amount of the disputed claim. In any case, Lessee shall indemnify, defend, and hold Government harmless from losses incurred from such liens. Lessee and any sublessee shall be responsible for any costs incurred by Government in obtaining clear title to its property due to their acts or omissions clouding the title.

26. TAXES. Lessee shall pay to the proper authority when and as the same become due and payable all taxes, assessments, and similar charges that, at any time during the Term of this Lease may be imposed on the Leased Premises. 10 U.S.C. § 2667(f) contains the consent of Congress to the taxation of Lessee's interest in the Leased Premises, whether or not the Leased Premises are in an area of exclusive Federal jurisdiction. Should Congress consent to taxation of Government's interest in the Leased Premises, this Lease will be renegotiated.

27. SUBJECT TO EXISTING AND FUTURE EASEMENTS. This Lease, and each sublease, is subject to all outstanding easements and rights in the nature of an easement (collectively, "easements") for the location of any type of facility over, across, in, and upon all or any part of the Leased Premises, and to the right of Government to grant additional easements over, across, in and upon the Leased Premises for the public interest, provided that any such additional easements shall not in any way affect Lessee's use and operation of the Leased Premises in accordance with the terms of this Lease. However, Government shall coordinate with Lessee to minimize any impact to Lessee's operations, and any additional easement shall be conditioned on the assumption by its grantee of liability to Lessee for damages that Lessee shall suffer for property destroyed or rendered unusable on account of the grantee's exercise of its easement rights. There is hereby reserved to the holders of outstanding easements or which may be granted later, to any workers officially engaged in the construction, installation, maintenance, operation, repair, or replacement of facilities located on the easement area, and to any Federal, state, or local official engaged in the official inspection of that work, reasonable rights of ingress and egress over the Leased Premises that may be necessary for the performance of their duties with regard to those facilities, subject to Paragraph 9. Government represents and warrants that there are no easements currently existing that would adversely affect Lessee's use and operation of the Leased Premises.

28. INGRESS, EGRESS, PARKING AND SECURITY.

28.1. **Access.** Lessee and any sublessees, and their employees, vendors, and invitees will be granted reasonable access to the Leased Premises under this Lease via [Main gate up until the time of completion of isolation fence, then afterwards via TBD gate. Lessee and sublessees, and their employees, vendors, and invitees, agree to adhere to all commercially reasonable base rules and regulations regarding installation security, ingress, egress, safety and sanitation that may be prescribed from time to time by the Commander/Commanding Officer. Lessee and any sublessee and their employees, vendors, and business invitees, shall coordinate parking with the appropriate office of the installation. Lessee and its invitees and contractors agree

to absorb all costs, including time and expense, associated with gaining access to the installation under the RAPIDGATE or similar program.

28.2. Installation Security. The Leased Premises is located on a secure Department of Navy installation and Lessee and any sublessee are required to comply with all applicable security rules, regulations, and procedures issued by the installation Commander/Commanding Officer. All employees of Lessee or sublessee that are required by the installation to do so, shall obtain appropriate clearance from the installation ("Clearance") to access the Leased Premises. Failure to obtain the required Clearance shall result in denial of access to the Leased Premises of Lessee's or sublessee's employees. Lessee and any sublessee agree to hold harmless Government from any liability of any nature for financial or other losses incurred by Lessee or any sublessee by reason of Lessee's or any sublessee's employees failure to obtain Clearance for access to the Leased Premises. The prior sentence shall survive the termination of this Lease.

29. ADMINISTRATION. Except as otherwise stated in this Lease, the RECO shall have complete charge of the administration of this Lease, including granting any consents and approvals hereunder it, and shall exercise full supervision and general direction insofar as the interests of Government are affected.

30. DAMAGE TO THE LEASED PREMISES. In the event all or any part of the Leased Premises is damaged either directly or indirectly as a result of Lessee's use or occupancy, whether during the construction, operation, maintenance, or replacement, or removal of improvements or otherwise, due to acts or omissions of Lessee, its agents, contractors, or employees, Lessee shall, subject to receipt of insurance proceeds and the rights of any Leasehold Mortgagee, rebuild, replace, or repair the item or items of the Leased Premises or facilities so lost or damaged.

31. APPLICABLE RULES AND REGULATIONS.

31.1. Compliance with Applicable Laws and Regulations. Lessee and any sublessee shall comply with all Federal, state, and local laws, regulations, ordinances and restrictions that are applicable, or may become applicable, to Lessee's or sublessee's activities on the Leased Premises. This includes, but is not limited to, laws and regulations concerning the environment, construction of facilities, health, safety, food service, water supply, sanitation, and any licenses and permits to conduct business. Lessee and any sublessee are responsible for obtaining and paying for permits required for its operations under this Lease. Lessee acknowledges that photovoltaic panels for use in the Project, as described in Attachment B and Attachment H, shall comply with Section 858 of Public Law 113-291.

31.2. Activities Subject to Installation Rules, Regulations and Procedures. Further, all activities authorized under this Lease shall be subject to the reasonable rules, regulations, and procedures regarding installation security, supervision, or otherwise, that may, from time to time, be reasonably prescribed by the installation Commander/Commanding Officer.

32. SUBCONTRACTORS AND AGENTS FOR LESSEE. All Work involving Lessee facilities must be performed by skilled tradesmen and bonded against loss due to damages resulting directly or indirectly from work performed.

33. SURRENDER. Upon the expiration of this Lease or its prior termination, and subject to subparagraphs 6.2 and 8.4, Lessee shall quietly and peacefully remove itself and its personal property from the Leased Premises and surrender possession to Government. With respect to Improvements, refer to subparagraphs 6.2 and 8.4. However, in the event Government shall terminate this Lease upon less than ninety (90) days' notice, Lessee shall be allowed a reasonable period of time, as determined by the RECO, but in no event less than ninety (90) days from receipt of notice of termination, in which to remove all of personal property from, and terminate its operations on, the Leased Premises. During the period prior to surrender, all obligations assumed by Lessee under this Lease shall remain in full force and effect; provided, however, that if Government shall in its sole discretion, determine that any action is equitable under the circumstances, it may suspend, in whole or in part, any further accruals of rent, if any, or maximum amount to be expended between the date of termination of this Lease and the date of final surrender of the Leased Premises. Government may, in its discretion, declare any personal property that has not been removed from the Leased Premises upon termination as abandoned upon an additional ninety (90) days' notice.

34. RECORDING. If a statutory short form or memorandum of this Lease is required or requested by the Lessee to be recorded, Lessee shall cause it to be prepared and recorded at its expense. Government agrees to execute and deliver such memorandum of Lease and agrees to have such memorandum recorded. In no event shall Lessee cause this entire Lease to be recorded, and a recordation of this entire Lease by Lessee shall constitute a breach of this Lease.

35. FEDERAL FUNDS. This Lease does not obligate any appropriated funds.

36. **ESTOPPEL.** Government shall, at any time and from time to time upon not less than fifteen (15) calendar days' prior notice by Lessee or any Leasehold Mortgagee, but in no event more than one (1) time in each calendar year, execute, acknowledge and deliver to Lessee and such Leasehold Mortgagee a statement in writing certifying: (a) that this Lease is unmodified and in full force and effect (or if there have been modifications that this Lease is in full force and effect as modified and stating the modifications); (b) whether or not to the best knowledge of Government, Lessee is in default in keeping, observing or performing any term, covenant, agreement, condition or limitation contained in this Lease and, if Lessee shall be in default, specifying each such default; (c) whether or not to the best knowledge of Government there shall have occurred any event which, with the giving of notice or passage of time or both, would become a default by Lessee in the keeping, observing or performing of any term, covenant, agreement, condition or limitation contained in this Lease, and, in such case, specifying each such occurrence of which Government may have knowledge; (d) whether there is pending any action, arbitration or proceeding between Government and Lessee arising under this Lease, and, if so, the nature thereof; (e) to the knowledge of Government, whether or not Government has counterclaims, defenses or right to offset against any amounts due to Lessee under this Lease and if so, the amount and nature thereof; (f) that the addresses for notices are as set out in this Lease or as stated in the statement; (g) that any such statement delivered pursuant to this Paragraph 37 is binding upon Government and may be relied upon by Lessee or by any prospective transferee of Lessee's interest in this Lease or in Lessee or any Leasehold Mortgagee or prospective Leasehold Mortgagee, but reliance on such statement may not extend to any default as to which Government shall have had no actual knowledge.

37. **HEADINGS.** The headings of paragraphs in this Lease are used solely for ease of reference. They may not be used to construe the meaning of all or any part of a paragraph.

38. **FORCE MAJEURE.**

39.1. **No Default.** Either Party shall not be in default under this Lease if either Party's performance is delayed or prevented by or due to events of Force Majeure.

39.2. **Definition.** "Force Majeure" shall mean any delay in completing or performing any obligation under this Lease (other than a monetary obligation) which arises from causes beyond the control and without the fault or negligence of the Party claiming such delay.

39.3. **Extension of Time for Performance.** In the case of delay due to Force Majeure, the time within which the claiming Party must comply with any of the terms, covenants and conditions of this Lease shall be extended by a period of time equal to the period of time that performance by the claiming Party is delayed or prevented by the causes specified above, provided that within thirty (30) days of the commencement of the cause of delay, Lessee shall have notified Government of the existence of such cause of delay.

39. **ATTACHMENTS.** Attachments to this Lease are set forth below:

- A. The Leased Premises
- B. Renewable Energy Generation Project Technical Information
- C. Environmental Condition of Property
- D. Rent Schedule
- E. Federal Facilities Agreement (FFA)
- F. Interconnection Services Agreement with PJM
- G. Environmental Protective Measures
- H. In-Kind Project and Performance
- I. Reserved
- J. NOSSA Risk Acceptance Letter
- K. Joint Inventory Inspection Report (JIIR)

IN WITNESS WHEREOF, the Parties have, on the respective dates set forth below, duly executed this Lease as of the day and year first above written.

GOVERNMENT

WITNESS:

THE UNITED STATES OF AMERICA, acting
by and through the Secretary of the Navy

(b) (6)

Date: 6/8/17

Date: 6/8/17

LESSEE

WITNESS:

COMPANY

(b) (6)

Date: June 1st, 2017

Date: June 1st, 2017

I certify that the person who signed this Lease on behalf of Lessee was then the duly elected or appointed officer indicated, and this Lease was duly signed for and on behalf of Lessee by authority of its governing body and is within the scope of its corporate powers.

(CORPORATE SEAL)

(b) (6)

